

1 JEAN E. WILLIAMS,  
Acting Assistant Attorney General  
2 SETH M. BARSKY, Section Chief  
MEREDITH L. FLAX, Assistant Section Chief  
3 COBY HOWELL, Senior Trial Attorney  
MICHAEL R. EITEL, Senior Trial Attorney  
4 U.S. Department of Justice  
5 Environment & Natural Resources Division  
Wildlife & Marine Resources Section  
6 1000 S.W. Third Avenue  
Portland, OR 97204  
7 Phone: (503) 727-1023  
8 Fax: (503) 727-1117  
Email: [coby.howell@usdoj.gov](mailto:coby.howell@usdoj.gov)

9  
10 *Attorneys for Federal Defendants*

11 UNITED STATES DISTRICT COURT  
12  
13 NORTHERN DISTRICT OF CALIFORNIA (Oakland)

14  
15 CENTER FOR BIOLOGICAL DIVERSITY,  
16 ET AL.,

17 Plaintiffs,

18 vs.

19 HAALAND, ET AL.,

20 Federal Defendants.  
21

Case. No. 4:19-cv-05206-JST

**JOINT STATUS REPORT AND  
STIPULATED BRIEFING  
SCHEDULE AND ~~PROPOSED~~  
ORDER**

22  
23 Pursuant to the Court's orders staying the related cases, *Center for Biological*  
24 *Diversity v. Haaland*, No. 19-cv-05206, *California v. Haaland*, No. 19-cv-06013, and  
25 *Animal Legal Def. Fund v. Haaland*, No. 19-cv-06812, the parties provide the  
26 following joint status report.  
27

1 1. These related cases<sup>1</sup> challenge three Endangered Species Act (“ESA”) final  
2 rules promulgated by the U.S. Fish and Wildlife Service within the U.S.  
3 Department of the Interior, two of which were jointly promulgated with the  
4 National Marine Fisheries Service within the National Oceanic and Atmospheric  
5 Administration, U.S. Department of Commerce. *See* 84 Fed. Reg. 45020 (Section 4  
6 revisions); 84 Fed. Reg. 44753 (Section 4(d) revisions); and 84 Fed. Reg. 44976  
7 (Section 7(a)(2) revisions).  
8

9 2. On November 19, 2020, the Court entered an amended case management  
10 order. ECF 111. In accordance with that order, plaintiffs filed their motions for  
11 summary judgment on January 19, 2021. ECF 86; ECF 116; ECF 130.  
12

13 3. On January 20, 2021, President Biden issued an Executive Order entitled  
14 “Executive Order on Protecting Public Health and the Environment and Restoring  
15 Science to Tackle the Climate Crisis.” In conformance with the Executive Order,  
16 Federal Defendants reviewed many rules promulgated in the last four years,  
17 including the final rules at issue in this case.  
18

19 4. On February 9, 2021, the Parties requested a stay of proceedings for 60 days  
20 to give appropriate officials adequate time to review the final rules and determine  
21 how they would like to proceed with this litigation. ECF 137. On February 16,  
22  
23  
24  
25

---

26 <sup>1</sup> On January 27, 2021, the Court related *State of California v. Haaland*, 21-cv-  
27 00440-JST (N.D. Cal.) with the above-related cases. ECF 136.

1 2021, the court granted the requested stay and vacated the existing deadlines. ECF  
2 139.

3 5. On April 19, 2021, the Court granted an additional stay of 60 days and  
4 ordered that the parties file a joint status report no later than June 18, 2021. ECF  
5 141. Federal Defendants and Plaintiffs then agreed to another short-term stay of  
6 30-days, which the Court granted. ECF 143.

7  
8 6. Following the Administration's review of the contested rules, on June 4, 2021,  
9 the Services announced that they intend to propose rulemaking to rescind and  
10 revise the final rules at issue in this case.<sup>2</sup>

11  
12 7. This information was conveyed to the parties on June 4. Since that time,  
13 Federal Defendants and Plaintiffs have discussed in good faith how to move forward  
14 with the litigation. In view of the Services' announced intent to propose rulemaking  
15 to rescind and revise the rules at issue here, Federal Defendants believe a stay of  
16 the litigation is warranted to allow this administrative process (which will include  
17 notice and comment) to play out and avoid potentially unnecessary litigation.  
18 Plaintiffs disagree with further stays on the ground that they do not believe Federal  
19 Defendants have provided sufficient information or assurances as to the content of  
20 the Services' contemplated revisions to Sections 4 and 7 of the ESA, or which of the  
21 provisions challenged by Plaintiffs in this litigation the Services intend to revise.  
22  
23  
24  
25

---

26 <sup>2</sup> See, [https://www.fws.gov/news/ShowNews.cfm?ref=u.s.-fish-and-wildlife-service-](https://www.fws.gov/news/ShowNews.cfm?ref=u.s.-fish-and-wildlife-service-and-noaa-fisheries-to-propose-regulatory-&_ID=36925)  
27 [and-noaa-fisheries-to-propose-regulatory-&\\_ID=36925](https://www.fws.gov/news/ShowNews.cfm?ref=u.s.-fish-and-wildlife-service-and-noaa-fisheries-to-propose-regulatory-&_ID=36925)

1 Accordingly, Federal Defendants and Plaintiffs stipulate to the following briefing  
2 schedule:

3 a. Federal Defendants' Motions for Stay: August 13, 2021  
4

5 b. Plaintiffs' Oppositions to Motions for Stay: September 3, 2021  
6

7 c. Federal Defendants' Reply in Support of Motions for Stay: September 17,  
8 2021.

9 8. Federal Defendants and Plaintiffs stipulate that if the Court denies Federal  
10 Defendants' Motions for Stay, the parties will resume briefing cross motions for  
11 summary judgment in accordance with the previous scheduling orders providing  
12 timeframes and page limits for the parties. Federal Defendants' Cross Motion for  
13 Summary Judgment and Oppositions to Plaintiffs' Motions for Summary Judgment  
14 or Motion for Voluntary Remand without Vacatur will be due 60 days from the  
15 Court's denial of Federal Defendants' Motions for Stay and briefing will resume  
16 from there in accordance with the scheduling orders.  
17  
18

19 9. Industry Intervenors agree with the briefing schedule set forth in the  
20 stipulation and reserve the right to respond on the same schedule as Plaintiffs. The  
21 State-Intervenors agree with the briefing schedule set forth in the stipulation.  
22 Private Landowner Intervenors agree with the briefing schedule set forth in the  
23 stipulation. However, Private Landowner Intervenors are unable to provide a  
24 position on the Federal Defendants' forthcoming Motions for Stay until they have  
25 reviewed them and reserve the right to respond on the same schedule as Plaintiffs.  
26  
27

1 DATED: July 19, 2021.

2 JEAN E. WILLIAMS,  
3 Acting Assistant Attorney General  
4 SETH M. BARSKY, Chief  
5 MEREDITH FLAX, Assistant Chief

6 /s/ Coby Howell.

7 COBY HOWELL, Senior Trial Attorney  
8 U.S. Department of Justice  
9 Environment & Natural Resources Division  
10 Wildlife & Marine Resources Section  
11 MICHAEL R. EITEL, Senior Trial Attorney  
12 U.S. Department of Justice  
13 Environment & Natural Resources Division  
14 Wildlife & Marine Resources Section  
15 1000 S.W. Third Avenue  
16 Portland, OR 97204  
17 Phone: (503) 727-1023  
18 Fax: (503) 727-1117  
19 Email: [coby.howell@usdoj.gov](mailto:coby.howell@usdoj.gov)

20 *Attorneys for Federal Defendants*

21 *By permission: /s/ Kristen Boyles*

22 KRISTEN L. BOYLES (CSBA # 158450)  
23 PAULO PALUGOD (NYBA # 5047964)  
24 [Admitted Pro Hac Vice]  
25 Earthjustice  
26 705 Second Avenue, Suite 203  
27 Seattle, WA 98104  
Ph: (206) 343-7340 | Fax: (206) 343-1526  
[kboyles@earthjustice.org](mailto:kboyles@earthjustice.org)  
[ppalugod@earthjustice.org](mailto:ppalugod@earthjustice.org)

ANDREA A. TREECE (CSBA # 237639)  
Earthjustice  
50 California Street, Suite 500  
San Francisco, CA 94111  
Ph: (415) 217-2089 | Fax: (415) 217-2040  
[atreece@earthjustice.org](mailto:atreece@earthjustice.org)

ROB BONTA  
Attorney General of California

1 DAVID A. ZONANA  
2 Supervising Deputy Attorney General  
3 DAVID G. ALDERSON, State Bar No. 231597  
4 Supervising Deputy Attorney General

5 /s/: By Permission

6 GEORGE TORGUN, State Bar No. 222085  
7 TARA MUELLER, State Bar No. 161536  
8 ERIN GANAHL, State Bar No. 248472  
9 Deputy Attorneys General  
10 1515 Clay Street, 20th Floor  
11 P.O. Box 70550  
12 Oakland, CA 94612-0550  
13 Telephone: (510) 879-1002  
14 Fax: (510) 622-2270  
15 E-mail: [George.Torgun@doj.ca.gov](mailto:George.Torgun@doj.ca.gov)

16 /s/ by Permission

17 CLEMENT ROBERTS (CSBA # 209203)  
18 DANIEL S. GUERRA (CSBA # 267559)  
19 ORRICK, HERRINGTON & SUTCLIFFE LLP  
20 405 Howard Street  
21 San Francisco, CA 94105  
22 Telephone: (415) 773-5700  
23 Facsimile: (415) 773-5759  
24 croberts@orrick.com  
25 dguerra@orrick.com

26 EMMANUEL FUA (CSBA # 284563)  
27 ORRICK, HERRINGTON & SUTLIFFE LLP  
51 West 52nd Street  
New York, NY 10019  
Telephone: (212) 506-5000  
Facsimile: (212) 506-5151  
efua@orrick.com

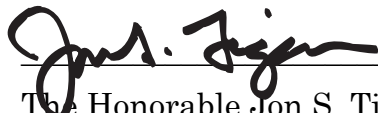
Attorneys for Plaintiffs

\* In compliance with Civil Local Rule 5-1(i), the filer of this document attests that all signatories listed have concurred in the filing of this document.

~~[PROPOSED]~~ ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED:

Dated July 22, 2021 :

A handwritten signature in black ink, appearing to read "Jon S. Tigar", is written over a horizontal line.

The Honorable Jon S. Tigar